IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:5/10/2004

CORAM

The Honourable Mr. Justice P.K. MISRA
and
The Honourable Mrs. Justice PRABHA SRIDEVAN

W.P. No.31152 of 2003,
and
W.P.M.P. No.37930 of 2003,
W.V.M.P. No.677 of 2004

1. The Director General,
Indian Council of Medical Research,
Ramalingaswami Bhavan,
Post Box No.4911,
New Delhi-110 029.

2. The Deputy Director General (SG)
& Member Secretary,
Indian Council of Medical Research,
Ramalingaswami Bhavan,
Post Box No.4911,
New Delhi-110 029. .. Petitioners
vs.

*1. The Central Administrative Tribunal,
Chennai Branch, by its Registrar,
City Civil Court Buildings II Floor,
Chennai-104.

2. R. Rathinasabapathi .. Respondents

PRAYER : Writ Petition under Article 226 of the Constitution of India
praying to issue a writ of certiorari, calling for the respondents relating
top the order dated 10.6.2003 made in O.A. No.1085 of 2002 on the file of the
Central Administrative Tribunal, Madras Bench, the first respondent herein and

!For Petitioners : Mr.M.T.Arunan, A.C.G.S.C.

^For Respondents : Mr.Kartick Rajan for
Mr.R.Parthiban.

:O R D E R
Heard the learned counsel appearing for the parties. Though
the matter was listed for considering the question of vacating the order of

stay, since the question involved in the miscellaneous petition is the same as in the writ petition itself, on consent of the counsel appearing for the parties, we have heard the writ petition on merits and the same is being disposed of by this order.

2. The present writ petition is directed against the judgment of the Central Administrative Tribunal in O.A. No.1085 of 2002, wherein the Tribunal has given a direction to the present petitioners to consider the case of the present second respondent for upgradation to the post of Library and Information Officer within a period of two months from the date of receipt of the order. The facts giving rise to the present writ petition may now be stated in brief.

3. The second respondent herein, who holds a P.G. Degree in Arts and also a P.G. Degree in Library and Information Science, joined as Senior Librarian in the Tuberculosis Research Center, I.C.M.R., Chennai on 5.2.1999. Pursuant to the recommendation of the Fourth Pay Commission, the pay scale of the second respondent was revised and ultimately, the second respondent was also re-designated as Assistant Library and Information Officer in the pay scale of Rs.2000-3500. It was asserted by the second respondent in the original application that he has eleven years' experience. Relying upon the letter in O.M. No.19(1)/IC/86 dated 24.7.1990 issued by the Ministry of Finance with reference to the Report of the Review Committee on Library Staff under the purview of the Central Government, particularly relating to Paragraph 4, the second respondent had filed an application for being upgraded to the post of Library and Information Officer in the pay scale of Rs.3000-4500. In the said application, it was contended by the second respondent that as an incumbent in the post of Assistant Library and Information Officer, he should be considered for appointment to a higher scale as he had the required qualification as well as experience as laid down in Annexure-I to the aforesaid letter.

4. Annexure-I to the aforesaid letter indicates two methods of appointment to the post of Library and Information Officer. As per the direct method of appointment, a person is required to be a Post Graduate as well as holding a Bachelor's Degree in Library Science with seven years' experience; the promotional qualification required is that the person should have the very same educational qualification with five/eight years' experience in the pay scale of Rs.2200-4000/Rs.2000-3 500. In other words, the educational qualification prescribed was the same, but the experience required was five years in case such a person was in the pay scale of Rs.2200-4000 and eight years in case such a person was in the pay scale of Rs.2000-3500.

5. The representation of the second respondent was rejected by the authorities on the ground that he was in the pay scale of Rs.2000-3500 and he had less than eight years of experience and as such, he was not eligible for being upgraded. This rejection was challenged by the second respondent before the Tribunal in O.A. No.1085 of 2002. The Tribunal came to the conclusion that the second respondent had the requisite educational qualification as contemplated for direct recruitment and accordingly allowed the application, giving a direction to the petitioners that the case of the

second respondent should be considered in his favourably. The said order of the Tribunal is being challenged by the Department in this writ petition.

6. It is contended by the learned counsel for the petitioners that unless a person is having the required qualification and experience for the promotional post, such person cannot be upgraded in accordance with Paragraphs 4.1 and 4.2 of the Official Memorandum dated 24.7.199 0. Paragraph 4.2 of the said O.M. is to the following effect :

"In case the existing incumbent (viz. Librarian) is in a lower scale of pay than the scale determined based on the categorisation, he may be considered for appointment in the higher scale provided he fulfils the recruitment qualifications laid down for that post in Annexure I to this O.M. subject to the provisions of para 4.3."

A reading of the aforesaid provision makes it clear that an incumbent can be upgraded provided he has got the necessary qualifications for the next post. However, this paragraph does not lay down in categorical terms that such person can be upgraded only if he has got the qualifications required for the promotion. As a matter of fact, if it would be insisted that in every case a person should have the necessary qualification and experience as required for promotion, there will not be any necessity for such a provision for upgradation.

7. In our considered opinion, a person having the qualification and experience as indicated, for either methods of recruitment, that is to say, either by direct recruitment or through promotion, such an incumbent can be considered for upgradation in accordance with Paragraph 4.2 of the O.M. dated 24.7.1990. As a matter of fact, the Tribunal has come to such a

conclusion and we do not find any error in the order passed by the Tribunal. The writ petition is accordingly dismissed. No costs. Consequently, W.P.M.P. No.37930 of 2003 and W.V.M.P. No.677 of 2004 are closed.

8. The Department is directed to consider the case of the second respondent for upgradation in accordance with Paragraph 4.2 of the O.M. dated 24.7.1990 keeping in view the qualifications including experience required in case of direct recruitment. This exercise may be done within a period of two months from the date of receipt of a copy of this order.

To

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& Member Secretary,
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